

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

IN THE MATTER OF:

FARMACIA FREDDY, INC.

DEBTOR.

*
*
*
*
*
*
*

CASE NO. 16-03150 (MCF)

CHAPTER 11

**STATUS CONFERENCE:
AUGUST 10, 2016**

**UNITED STATES TRUSTEE'S MOTION TO DISMISS
PURSUANT TO 11 U.S.C. § 1112(b)(1) AND (b)(4)(F)**

TO THE HONORABLE COURT:

Guy G. Gebhardt, the Acting United States Trustee for Region 21 (the "United States Trustee"), in furtherance of the administrative duties imposed pursuant to 11 U.S.C. §586(a), states and prays as follows:

1. The Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code on April 21, 2016.
2. A Status Conference is schedule to be held on August 10, 2016 (DN 18).
3. The United States Trustee submits that there is cause for dismissal of the case of caption, as more fully explained below.

**Cause for Dismissal Pursuant to 11 U.S.C. § 1112(b)(1) and (b)(4)(F)
(Unexcused Failure to Satisfy Timely any Filing or Reporting Requirement
Established by this Title or by Any Rule Applicable to a Case under This Chapter)**

4. Debtor has enjoyed the benefits of the filing of a bankruptcy petition without having complied with the reporting duties imposed by the Bankruptcy Code.

5. Section 1112 (b)(l) and (4)(F) of the Bankruptcy Code, provides as follows:

§1112. Conversion or dismissal

.....

(b)(1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interest of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, in the movant establishes cause.

.....

(b)(4) For purposes of this section, the term "cause" includes –

.....

F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

.....

11 U.S.C. §1112(b)(1) and (b)(4)(F).

6. Debtor has not filed any operating report since the filing of the petition on April 21, 2016. Debtor has not filed the monthly operating reports for the months of April, May and June of 2016. Debtors are required to timely file periodic reports and summaries of operations by Sections 704(7) & (8), 1106(a)(1), and 1107(a) of the Bankruptcy Code, Bankruptcy Rule 2015, and Local Bankruptcy Rule 2015-2(a). The failure to file on a timely basis operating reports constitutes cause for conversion or dismissal of a case. 11 U.S.C. § 1112(b)(4)(F). *See In re Berryhill*, 127 B.R. 427, 433 (Bankr. N.D. Ind. 1991). It also renders the United States Trustee and creditors incapable of determining whether debtor is engaged in actions which have resulted in loss or diminution to the estate warranting dismissal or conversion under Section 1112(b)(1) of the Code.

7. Therefore, the United States Trustee respectfully submits that cause for dismissal has been established under Section 1112(b)(4)(F), and hereby moves the court for the dismissal of the captioned proceedings.

UNITED STATES TRUSTEE'S MOTION TO DISMISS
PURSUANT TO 11 U.S.C. § 1112(b)(1) AND (b)(4)(F)
Case No. 16-03150 (BKT), Farmacia Freddy, Inc.

Page 3

Dismissal - Benefit of the Creditors and the Estate

8. Debtor's behavior demonstrates that it has no intention to comply with its duties as Debtor, thus, a reorganization under Chapter 11 is not likely.

9. The United States Trustee respectfully submits that the relief sought is in the best interest of creditors and the estate inasmuch as Debtor's failure to comply with its duties will cause an unreasonable and prejudicial delay.

WHEREFORE, the United States Trustee respectfully requests that the Court dismiss the instant case pursuant to 11 U.S.C. Sec. 1112(b)(1) and (b)(4)(F).

NOTICE

Within fourteen (14) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be granted unless: (I) the requested relief is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise.

-CERTIFICATE OF SERVICE-

I DO HEREBY CERTIFY that on this day I electronically filed a true and exact copy of the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

- JESUS ENRIQUE BATISTA SANCHEZ jesus.batista@batistalawgroup.com, jebatista31@gmail.com;rosafblg@gmail.com;G4630@notify.cincompass.com;jeb@ecf.inruptcy.com;carolina.rivera@batistalawgroup.com
- MONSITA LECAROS ARRIBAS ustpreregion21.hr.ecf@usdoj.gov
- Alessandra M Rosa arosatirado@lvvlaw.com, arosatirado@gmail.com

UNITED STATES TRUSTEE'S MOTION TO DISMISS
PURSUANT TO 11 U.S.C. § 1112(b)(1 AND (b)(4)(F)
Case No. 16-03150 (BKT), Farmacia Freddy, Inc.

Page 4

- US TRUSTEE ustpregion21.hr.ecf@usdoj.gov

JAVIER VILARINO jvilarino@vilarinolaw.com,

javier.vilarino@gmail.com;jvilarino@ecf.courtdrive.com;G32197@notify.cincompass.com

I DO HEREBY FURTHER CERTIFY that on this same date a true and exact copy of
the foregoing has been sent by regular United States mail to Debtor:

FARMACIAS FREDDY, INC.
PO BOX 97
NAGUABO, PR 00718

DATED: July 29, 2016

GUY G. GEBHARDT
Acting United States Trustee for Region 21

MONSITA LECAROS ARRIBAS
Assistant United States Trustee

OFFICE OF THE UNITED STATES TRUSTEE
Edificio Ochoa
500 Tanca Street, Suite 301
San Juan, Puerto Rico 00901-1922
Tel.: (787) 729-7444
Fax: (787) 729-7449

[Electronically Filed]

By: /s/Nancy Pujals
Nancy Pujals
Trial Attorney
USDC-PR No. 201103